IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 23001 of 2006(L)

OS.359/2002 of MUNSIFF COURT, CHANGANACHERRY

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PETITIONER:

JOHN THOMAS, S/O. THOMAS,
EDAVETTAL PUTHENMADATHIL HOUSE, KANGAZHA KARA,
KANGAZHA VILLAGE, KOTTAYAM.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENT:

JACOB THOMAS, S/O. THOMAS,
EDAVETTAL PUTHENMADATHIL HOUSE, KANGAZHA KARA,
KANGAZHA VILLAGE, KOTTAYAM.

BY ADV. SRI.K.V.JAYACHANDRAN
SRI.RAJU V.MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT IN OS NO.359/2002 BEFORE THE MUNSIFF'S COURT, CHANGANACHERRY.

EXT.P2 : TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.359/2002 BEFORE THE MUNSIFF'S COURT, CHANGANACHERRY.

EXT.P3 : TRUE COPY OF REPORT AND PLAN BY ADVOCATE COMMISSIONER IN IA NO.2296/2002

EXT.P4 : TRUE COPY OF PETITION FILED BY PETITIONER TO SET ASIDE EXT.P3 COMMISSION REPORT.

EXT.P5 : TRUE COPY OF ORDER IN IA NO.1034(A) DT.19.5.05 OF THE MUNSIFF'S COURT, CHANGANACHERRY.

EXT.P6 : TRUE COPY OF COMMISSION APPLICATION DT.1.6.06 FILED BY PETITIONER BEFORE THE MUSNIFF'S COURT, CHANGANACHERRY.

EXT.P7 : TRUE COPY OF ORDER DT.7.7.06 PASSED BY THE MUNSIFF'S COURT, CHANGANACHERRY IN IA NO.838/06 IN OS NO.359/02.

EXT.P8 : TRUE COPY OF SETTLEMENT DEED NO.655 OF THE YEAR 1981.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 23001 OF 2006

Dated this the 19th day of July, 2007

JUDGMENT

Notwithstanding the strenuous and elaborate arguments of Mr.M.P.Madhavankutty, learned counsel for the petitioner, I am unable to agree with him in his submission that Ext.P7 order of the learned Munsiff dismissing an application for issuance of commission for local inspection is vitiated to the extent of justifying interference by this Court under the visitorial jurisdiction. According to Mr.Madhavankutty, the issues relate to the width of a controversial pathway. On the basis of an application submitted by the plaintiff a commissioner was appointed and report filed on the basis of the local inspection was obtained in all that cases. To that report, the petitioner filed objections and filed an application to cross examine the commissioner and the commissioner was examined. The court below after considering the rival contentions, dismissed that application and Ext.P5 is the order. It is on the heels of Ext.P5 that petitioner filed the present application for deputation of a commission for another local inspection. Though Mr.Madhavankutty submitted that the dispute is regarding the width of the pathway, but at the Bar there was an argument that there exists an alternate pathway and that matter was not mentioned in the earlier commission report.

The learned Munsiff had good reason to turn down the above request. As for the width of the path way, in the wake of Ext.P5 which may not be proper for the court below to have issuance of a fresh commission. The challenge against Ext.P5 fails. At the same time, I permit the petitioner to adduce documentary evidence on his contention regarding the correct width of the path way. After recording evidences, the learned Munsiff will decide on the issue as to the necessity of deputing any fresh commission regarding the width of the pathway. The final arguments in the suit shall be heard only after that.

PIUS C. KURIAKOSE, JUDGE

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